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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DANIEL LEMAY, Plaintiff and Appellant, v. CHARLES R. DREW UNIVERSITY OF MEDICINE AND SCIENCE, Defendant and Respondent.	B205951 (Los Angeles County Super. Ct. No. TC020129)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rose Hom, Judge. Affirmed.

Khorrami, Pollard & Abir and Mark Ravis for Plaintiff and Appellant.

Littler Mendelson, Jaffe D. Dickerson, Tanja L. Darrow and Shannon R. Boyce for Defendant and Respondent.

INTRODUCTION

Plaintiff Daniel LeMay appeals from a summary judgment in favor of defendant Charles R. Drew University of Medicine and Science. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed suit on October 24, 2006 against defendant. On May 25, 2007, plaintiff filed a first amended complaint asserting claims for (1) breach of contract, and (2) misappropriation of name. On October 25, 2007, the trial court granted defendant's motion for summary judgment, in part based upon a lack of evidence that plaintiff's name was used for marketing or advertising purposes.

Defendant operated an academic program for medical students and post-graduate medical students. Defendant ran its medical resident specialty programs through King/Drew Medical Center (Hospital), which was owned and operated by the County of Los Angeles (County). Plaintiff was employed by the County as a physician and also served as a faculty member for defendant.

The relationship between plaintiff and Hospital was governed by an Affiliation Agreement between defendant and the County. Plaintiff was compensated separately by the County and defendant. Plaintiff's salary from defendant was usually about $100,000 per year.

On May 5, 2005, the County suspended plaintiff due to suspected time card fraud and alleged violations of the County's policies relating to outside employment. After plaintiff was placed on administrative leave, he was not paid by defendant and performed no services for defendant. Defendant modified plaintiff's status to that of a non-compensated faculty member.

Defendant's only claim on appeal is his cause of action for misappropriation.[1] The misappropriation claim is premised upon defendant's alleged use of plaintiff's name on defendant's website and letterhead after he became a non-compensated faculty member of defendant. Plaintiff never informed anyone that he wanted his name taken off the website. Plaintiff also admitted that he had no understanding that he would be compensated for the use of his name on the website or ever heard of a faculty member being paid for it.

Plaintiff believes that his name was used on defendant's letterhead. Defendant also admits that he never asked anyone to take his name off the letterhead.

DISCUSSION

A. *Standard of Review*

Summary judgment properly is granted if there is no question of fact and the issues raised by the pleadings may be decided as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) To secure summary judgment, a moving defendant may show that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, *supra*, at p. 849.) Once the moving defendant has met its burden, the burden shifts to the plaintiff to show that a triable issue of fact exists as to the cause of action or the defense thereto. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, *supra*, at p. 849.) All doubts as to the propriety of granting the motion are resolved in favor of the opposing party. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

On appeal, we exercise our independent judgment in determining whether there are no triable issues of material fact and the moving party thus is entitled to judgment as a

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[1] Plaintiff indicates that his appeal is not based on any contract issue.

matter of law. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334-335.) We must uphold the judgment if it is correct on any ground, regardless of the reasons the trial court gave. (*Continental Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.)

B. *Failure to Cite to the Record*

Although the decision of the trial court in a summary judgment ruling is reviewed independently, the review is limited to issues that have been adequately raised and supported in the appellant's brief. (See *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) The record designated by plaintiff is woefully inadequate to allow a de novo review. For example, plaintiff failed to designate his first amended complaint as part of the record on appeal. We must examine the complaint to identify the issues of which the summary judgment disposes. (*Ohton v. Board of Trustees of California State University* (2007) 148 Cal.App.4th 749, 763.)

Rule 8.204(a)(1)(C) of the California Rules of Court requires that any statement in a brief concerning matters in the appellate record—whether factual or procedural and no matter where in the brief the reference to the record occurs—must be supported by "citation to the volume and page number of the record where the matter appears." To the extent the parties have made references to factual or procedural matters without record references, we will disregard such matters. (*Yeboah v. Progeny Ventures, Inc.* (2005) 128 Cal.App.4th 443, 451; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1.) Neither will we consider any claim of error based on statements unsupported by record references. (*Weller v. Chavarria* (1965) 233 Cal.App.2d 234, 246.)

Meeting the burden on appeal also requires citation to relevant authority and argument. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282.) It is not our responsibility to comb the appellate record for facts, or to conduct legal research in search of authority, to support the contentions on appeal. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768; see also *Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1301.)

C. ***No Triable Issue of Material Fact with Respect to Plaintiff's Misappropriation Claim***

Even assuming for the sake of argument that plaintiff submitted an adequate record to review, his misappropriation claim still fails. Civil Code section 3344, subdivision (a), provides that "[a]ny person who knowingly uses another's name . . . on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent . . . shall be liable for any damages sustained by the person or persons injured as a result thereof."

Plaintiff consented to defendant's use of his name as a faculty member on the website and never informed anyone he wanted his name taken off the website until his complaint was amended in 2007. Plaintiff was not aware of any financial benefits defendant may have gained from the use of his name and cites no evidence that anyone used defendant's services as a result of plaintiff's name on the website.

Plaintiff failed to present evidence that he was damaged by the use of his name on defendant's website. Plaintiff argues that as a result of unfavorable publicity and public scrutiny on defendant, it was not necessarily desirable to have one's name listed as one of defendant's faculty members. Even assuming this to be true, plaintiff still has not shown a scintilla of admissible evidence that he has suffered any damage as a result of the use of his name on defendant's website. He thus has failed to demonstrate the existence of a triable issue of fact. Summary judgment therefore properly was granted.

DISPOSITION

The judgment is affirmed. Defendant is to recover its costs on appeal.

NOT TO BE PUBLISHED

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.